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DEPARTMENT OF ECOLOGY  
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Initial: AB 7/31

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
IN AND FOR THE STATE OF WASHINGTON

WASHINGTON ASSOCIATION OF SEWER  
& WATER DISTRICTS,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT  
OF ECOLOGY,

Respondent.

PCHB No. \_\_\_\_\_

NOTICE OF APPEAL

Pursuant to Chapter 43.21B RCW, Chapter 34.05 RCW, and Chapter 371-08 WAC,  
Washington Association of Sewer & Water Districts, by and through its attorneys James A.  
Tupper, Jr. and Tupper Mack Wells PLLC, hereby appeals the Department of Ecology Phase I  
and Phase II Municipal Stormwater Permits issued on July 1, 2019.

I. Appealing Party

1.1 Appealing Party:

Washington Association of Sewer & Water Districts  
12720 Gateway Drive, Suite 204  
Tukwila, WA 98168  
Telephone: (206) 246-1299

1.2 Representation:

James A. Tupper, Jr.  
Tupper Mack Wells PLLC  
2025 First Avenue, Suite 1100  
Seattle, WA 98121  
Telephone: (206) 493-2300  
Fax: (206) 493-2310  
tupper@tmw-law.com

1 II. Identification of Parties

2 2.1 Washington Association of Sewer & Water Districts (WASWD), Appellant.

3 2.2 State of Washington, Department of Ecology (Ecology), Respondent.

4 III. Decision Under Appeal

5 3.1 Ecology issued the Phase I Municipal Stormwater Permit, Western Washington  
6 Phase II Stormwater Permit, and Eastern Washington Phase II Municipal Stormwater Permit on  
7 July 1, 2019, with effective dates for each permit on August 1, 2019. Copies of the permits are  
8 attached hereto.

9 IV. Grounds for Appeal

10 4.1 The municipal stormwater permits fail to adequately ensure that authorized  
11 discharges to groundwater will meet the antidegradation policy in the state Groundwater Quality  
12 Standards, WAC 173-200-030(1). That policy expresses a fundamental principle that pollutants  
13 may not be discharged directly to groundwater and that no discharge to groundwater can be  
14 allowed where it would reduce the existing water quality in an aquifer.

15 4.2 The municipal stormwater permits additionally fail to adequately ensure through  
16 documentation, design, monitoring, operation and maintenance that discharges to groundwater  
17 will comply with the non-endangerment standard for injection wells in WAC 173-218-080.

18 4.3 The municipal stormwater permits fail to regulate all groundwater discharges by  
19 excluding coverage for underground injection wells subject to ch. 173-218 WAC where WAC  
20 173-218-090(1)(c)(i)(C) affords a presumption of compliance with the non-endangerment  
21 standard municipalities covered under the permits based on implementation of best management  
22 practices in either the Western Washington Stormwater Management Manual or the Eastern  
23 Washington Stormwater Management Manual.

24 4.4 The municipal stormwater permits, and the stormwater management manuals, fail  
25 to ensure that discharges to groundwater will not prevent the movement of contaminants into  
26 underground sources of drinking water prohibited under 40 CFR § 144.12(a).

1           4.5     The municipal stormwater permits, and the stormwater management manuals, fail  
2 to adequately regulate discharges to groundwater within wellhead protection zones and the  
3 capture areas of public water supply wells.

4           4.6     Appellant WASWD is aggrieved by Ecology issuance of the municipal  
5 stormwater permits without adequate protection of groundwater resources on which public water  
6 supplies depend. WASWD has standing to maintain this appeal to the Board.

7           4.7     The Board has jurisdiction over this appeal pursuant to RCW 43.21B.110(1)(d).

8                               V.     Statement of Facts

9           5.1     The municipal stormwater permits were issued on July 1, 2019, authorizing the  
10 discharges to groundwater.

11          5.2     WASWD is a statewide trade association representing publicly owned water and -  
12 sewer districts organized under title 57 RCW that provide 19% of the state's population with  
13 clean, affordable drinking water and 14% of the state's population with sewer transmission and  
14 treatment services. Members of WASWD collectively operate a \$595 million annual enterprise.

15          5.3     WASWD members have a strong interest in maintaining and improving  
16 groundwater quality. The public water supply provided by water districts is in many cases  
17 dependent on the purity and integrity of groundwater.

18          5.4     The municipal stormwater permits fail to adequately protect groundwater quality  
19 and violate applicable standards and requirements for both groundwater quality and discharges  
20 to groundwater.

21                               VI.    Relief Sought

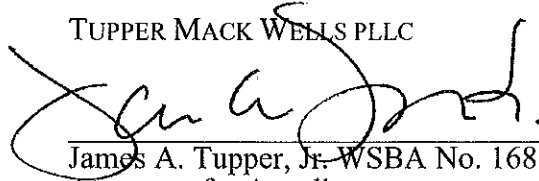
22           Appellant Washington Association of Sewer & Water Districts respectfully requests that  
23 the Board grant the following relief:

24           1.     An order invalidating the municipal stormwater permits and remanding the  
25 permits to Ecology for modification to include appropriate and adequate conditions to protect  
26 groundwater quality.

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2. Such other and further relief as the Board deems appropriate.

Respectfully submitted this 29<sup>th</sup> day of July, 2019.

TUPPER MACK WELLS PLLC  
  
James A. Tupper, Jr. WSBA No. 16873  
Attorneys for Appellant

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DECLARATION OF SERVICE

I declare on oath that on this date I filed the foregoing Notice of Appeal and attached Appendices with the Pollution Control Hearings Board by electronic mail to:

pchb-shbappeals@elaho.wa.gov

and by mailing the original and one (1) copy, via first-class registered U.S. Mail, postage prepaid, addressed as follows:

Pollution Control Hearings Board  
P. O. Box 40903  
Olympia, WA 98504-0903

I further declare that I served a copy of this appeal on the Department of Ecology by mailing the same via U.S. Mail, postage prepaid, addressed as follows:

Department of Ecology  
Attn: Appeals Processing Desk  
P. O. Box 47608  
Olympia, WA 98504-7608

Signed at Seattle, Washington, this 29th day of July, 2019.

  
Nico Schulz

4816-5110-2877, v. 3

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